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EXAMINER

LEWIS, A

ART UNIT

PAPER NUMBER

3761

DATE MAILED:

12/29/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/030,394

Applicant(s)

Gregory Yuschak et al.

Examiner

A. J. Lewis

Group Art Unit

3741

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 11/4/99 (Amendment & Request for CPA).
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-28 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-13, 15-28 is/are rejected.
- ☒ Claim(s) 14 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_ ☐ Interview Summary, PTO-413
- ☒ Notice of References Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other \_\_\_\_\_

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## **DETAILED ACTION**

### ***Reissue Applications***

1. Applicant is reminded of the continuing obligation under 37 CFR 1.56 to timely apprise the Office of any litigation information, or other prior or concurrent proceeding, involving Patent No. 5,579,761 , which is material to patentability of the claims under consideration in this reissue application. This obligation rests with each individual associated with the filing and prosecution of this application for reissue. See MPEP §§ 1404, 1442.01 and 1442.04.
2. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-10,13,15,16,18-28 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tayebi ('508).

As to claim 1, Tayebi discloses a respirator that comprises: a face piece (11) sized to fit at least over the nose and mouth of a person (col.9, lines 63-67); a cartridge receiving structure (22) located on the face piece; and a filter cartridge (19,20) that has a housing into which a filter is contained, the filter cartridge (19,20) capable of being manually snapped into engagement with the cartridge receiving structure (22) to produce an audible noise (col. 9, lines 10-16, 50-54; col.10, line 48-col.11, line 11), the engagement being being instantaneously obtainable by pressing the filter cartridge against the receiving structure without rotational movement, the filter cartridge further being capable of being readily separated from the cartridge receiving structure by pulling manually thereon.

Alternatively, while Tayebi does not explicitly disclose the production of an audible noise, there is explicit disclosure of the manual manipulation of the filter cartridge (19,20) against the cartridge receiving structure (22) (both of which are made of resilient thermoplastic materials) during insertion of the filter cartridge into the cartridge receiving structure and explicit disclosure of the phrase "...snap fit..." as it relates to the insertion of the filter cartridge into the cartridge receiving structure (col. 9, lines 10-16, 50-54; col.10, line 48-col.11, line 11). It would have been obvious that the coupling of the filter cartridge and cartridge receiving structure of Tayebi would have resulted in the production of an audible noise upon coupling because the the filter cartridge and cartridge receiving structure are made of resilient thermoplastic material (i.e. there is physical

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deformation during coupling) and because of the explicit disclosure of the terminology "...snap fit..." as it relates to such a coupling.

As to claim 2, the respirator of Tayebi is readable upon a negative pressure respirator inasmuch as it requires a user to create a negative pressure during inhalation to cause ambient air to flow into the respirator.

As to claims 3,4,16,18,19 Tayebi (col.11, lines 9-10) discloses an air tight seal formed between the filter cartridge and cartridge receiving structure due to the mating the radially outwardly projecting flange surface (19,20) of the filter cartridge with the inwardly projecting skirt surface (#22 of fig.4a) of the cartridge receiving structure.

As to claims 5,6,13,20, the male and female members (i.e. filter cartridge flange and cartridge receiving groove/projection, respectively) of Tayebi compress and expand in a manner which results in a complimentary air tight fit therebetween (col.10, line 48-col.11, line 11).

As to claims 7,8, Tayebi (fig.5) discloses a filter element (18) which is offset axially (i.e. offset axially inwardly) from the filter cartridge (23) when the filter cartridge is in engagement with the cartridge receiving structure and the cartridge receiving structure encompasses an aperture (12) which is less than the circumference of the cylindrical filter element (18).

As to claims 9,10, Tayebi (col.10, line 48-col.11, line 11) as discussed above with respect to claim 1, also discloses pressing the cartridge against the face piece and grasping the filter cartridge and pulling thereon axially in a direction normal to the face piece for removal.

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As to claim 15, the snap fit engagement mechanism of Tayebi (19,20,22) is offset laterally from the filter element (17) and includes an outflow aperture (12) having a circumference substantially smaller than a circumference of the filter element.

Claims 21-25 are substantially equivalent in scope to claim 1 and are included in Tayebi for the reason set forth herein above with respect to claim 1.

As to the amendment to claim 23, Tayebi (col.10, line 66+) discloses that cartridge (19) is further capable of being readily separated from the face piece by pulling manually thereon.

As to claims 26-28, applicant is referred to the discussion above with respect to claims 3-6,13,16,18-20 above.

6. Claims 11,12,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tayebi ('508).

As to claims 11,12,17, the particular flexural modulus of the material of the cartridge receiving structure and filter cartridge of Tayebi and the particular amount of force required to couple and uncouple the filter cartridge to/from the cartridge receiving structure can be arrived at through mere routine obvious experimentation and observation with no criticality seen in any particular amount of force.

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*Allowable Subject Matter*

7. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

8. Applicant's arguments filed 05/17/99 and 11/04/99 have been fully considered but they are not persuasive.

Applicants' arguments are based upon an inaccurate allegation that the filter cartridge receiving structure (19) of Tayebi does not contain the filter. Tayebi (fig.3) illustrates cartridge receiving structure (19) which "contains" a filter (17), that is, the circumference of filter (17) is illustrated as being positioned within the confines of walls of the cartridge receiving structure (19); therefore, cartridge receiving structure (19) of Tayebi is disclosed as containing a filter (17). Details of the snap fit engagement between the cartridge receiving structure (19) and the face piece are disclosed in Tayebi (beginning at col.10, line 30) in connection with figs.4,4a.

Applicant's assertion that element (19) is devoid of any filter element prior to being attached to the mask is noted; however, even if this is the case element (19) of Tayebi continues to be readable upon a filter cartridge within the metes and bounds of the claim language defining a filter cartridge. The language of the claims merely requires that a filter element be contained within the cartridge housing which is illustrated by Tayebi (fig.3) which illustrates filter (17) being contained within the recess(es) of cartridge (19).


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*Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Lewis whose telephone number is (703) 308-0716.

Aaron J. Lewis

December 20, 1999

  
Aaron J. Lewis  
Primary Examiner